IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 234 of 2003

Y.S. Chauhan
S/o Sri J.S. Chauhan,
At present resident of Amar Colony,
Lajpat Nagar,
New Delhi …. Appellant

Versus

U.P. Finance Corporation
Having its Head Office at
14/88 Civil Lines, Kanpur
And Regional Office at 76
Rajpur Road, Dehradun. ……..…… Respondent

Mr. Alok Singh, Advocate for the appellant
Mr. Naresh Pant, Advocate for the State.

Coram: Hon. S.H.Kapadia, C.J.
Hon. Rajesh Tandon, J.
Dated: 01.09.2003:

PC:

Admit.

Respondents waives service.

Appeal taken up for final hearing and disposal.

By this Appeal from Order under Order 43 Rule 1, C.P.C., the appellant has challenged the order dated 23.8.2003 inter alia on the ground that the recovery certificate issued by the competent authority under U. P. Zamidari Abolition Act, is ab initio void. The recovery certificate was issued on 28.07.2003.

In view of the judgment of the Supreme Court in the case of Unique Butyle Tube Industries (P) Ltd. Vs. U. P. Financial Corporation and others reported in (2003) 2 S.C.C. 455, the financial institution can not invoke the provisions of the U.P. Zamidari Abolition Act. They can invoked either section 29 of the Sate Financial Corporation Act or they can invoke the provisions of D. R. T. Act. Incidentally, it may be mentioned that in this case the U. P. Financial Corporation has invoked section 29 of the State Financial Corporation Act as far back as on 19.12.1997. However, thereafter no steps

have been taken in that direction. In the circumstances at this very stage itself, in view of the judgment of the Supreme Court we strike down the recovery certificate dated 28.7.2003.

We have adopted this course of action because we are of the view that in view of the judgment of the Supreme Court the entire controversy is settled. It is no more res integra.

However, this order will not prevent the U.P. Financial Corporation from proceeding either under the D.R.T. Act or under the State Financial Corporation Act, 1951, pursuant to the notice which they have given as far back on 19.02.1997.

We make it clear that in view of our order suit bearing no. 439 of 2003 pending in the Court of Civil Judge (S.D.) Dehradun stands disposed of.

Appeal allowed no order as to costs.

(Rajesh Tandon, J) **(S.H. Kapadia, C.J.)**

A.K.